

DMR ADVISORY COUNCIL MEETING

April 21, 2004, 1:00 p.m.

Minutes

A meeting of the Department of Marine Resources' (DMR) Advisory Council (AC) was held on this date at the Department of Human Services Central Offices Conference Room, 442 Civic Center Drive, Augusta. AC members attending this meeting included **David Turner, (Secretary - Chair), Larry Knapp, David Pecci, Blair Pyne, Al West, Mike Danforth, Dana Temple, Craig Pendleton and Bill Sutter**. Council members not present included **Dana Rice, Sr., Ralph Smith, Rod Mitchell, Scott Tilton and Allyson Jordan**. Department staff included Commissioner George Lapointe, Deputy Commissioner Lewis Flagg, Col. Joe Fessenden, Amy Fitzpatrick, Deirdre Gilbert and L. Churchill. Other attendees included Bob Brown (LMZ Council E, Edgecomb) and Muriel Hendrix (Working Waterfront newspaper).

1. Welcome

David Turner, Secretary conducted the meeting in the absence of Chair Dana Rice. He called the meeting to order shortly after 1:00 pm. He asked the Department to confirm that a thank-you letter has been or will be sent to Steve Train for his service on the Council.

The nominating committee: David Turner, Larry Knapp and Allyson Jordan nominated David Turner to replace Elizabeth Sheehan as vice chair. Larry Knapp was nominated to fill the office of secretary that David Turner currently holds. All persons nominated were agreeable to accept the offices.

Motion: (C. Pendleton, B. Pyne) *Unanimous. Motion to approve the nominations for officers: David Turner – Vice Chair and Larry Knapp - Secretary.*

2. Approval of minutes (Handout)

Motion: (B. Pyne, D. Pecci) *Unanimous. Motion to approve the minutes of the meeting held March 30, 2004 with the corrections requested by Ralph Smith as follows: Replace "wet storage" with "purge" when he refers to harvesters; page 3 – he did not object to and said that he asked that the location information be coded to allow indexing in the future; page 3 – his question about brokers was not an objection; and in reference to the time and temperature recorder replace the word "not" with "how possible?"*

3. Regulations - Action (voting)

- Chapter 25.07 ASMFC Lobster Management Areas and Limitations (new) and Chapter 25.08(B)(2) Lobster Trap Tag System (Handout)

Comm. Lapointe reviewed. This rulemaking does not include the gauge limits on maximum size due to a conflicting Maine statute, which will need to be addressed in the next Legislative session. The ASMFC is aware of this. ASMFC wanted all Area rules to be adopted, however that would have been sizable and instead Amendment 3 and Addendums I – IV have been incorporated by reference. This also means that copies of the amendment and addendums I-IV must be filed with an adopted rulemaking with the Secretary of State's Office. Questions were asked about Area 3; federal qualification; Maine lobster fishermen declaring Area 3; when persons fishing there must comply with the more restrictive rules of Area 1; this will be presented for statutory changes next session; and the size of Area 1.

Motion: (C. Pendleton, A. West) *To accept as written.*

Discussion: None.

Motion continued: *Unanimous. The Council voted to approve the proposed rulemaking for Chapter 25.07 ASMFC Lobster Management Areas and Limitations (new) and Chapter 25.08(B)(2) Lobster Trap Tag System.*

- Proposed repeal of Chapter 25.50 Closed Season Regulation on Fishing for Crabs in Sheepscot River; Chapter 25.55 Closed Season on Fishing for Crabs in Damariscotta River; and Chapter 25.60 Closed Season on Fishing for Crabs in Medomak River (Handout)

Col. Fessenden reviewed. This was put in place several years ago based on concerns about quality. A group surfaced about 6 months ago to repeal, see the summary of comments. Bill Sutter attended. From Patrol's perspective if this is not serving a purpose or is not needed it should be repealed.

Motion: (B. Sutter, C. Pendleton) To not accept i.e., oppose the repeal.

Discussion: Bill Sutter explained why he opposed repealing these rules. Gear conflict can be handled separately. The reasons about quality from 20 years ago still stand. It takes 30 poor quality meats per pound versus later in the spring only 10-12 good quality meats per pound. This is good economics and conservation by using fewer animals. The Department's response that there is a limited number of persons doing this conflicts with the persons supporting this who indicate they would increase fishing on this resource if repealed.

Craig Pendleton: Is this a directly fishery? Col. Fessenden: Yes

C. Pendleton: Did this go through the [local lobster Zone] Council? L. Churchill: Zone E responded, see summary of comments. Zone D was mailed the same information as Zone E but provided no comment.

Larry Knapp: After the Zone E Council voted to support this he said that he received calls to support what Bill Sutter said. The members on the Zone E council don't fish crabs and didn't know the status.

Blair Pyne also agreed with Bill Sutter's points. Blair said he attended the original hearings 20 years ago. There were guys setting traps early and a bunch of crab fishers created problems. There are no compelling reasons to repeal this. Not sure why the Department wants to create another snub of draggers. Draggers gave up another 25 days a few years ago to give lobster fishers time to take up their gear, which hasn't worked; they just leave their gear in longer. The state has been liberal with lobster fishers while draggers took it on the chin. The crabs could be caught after April 15th. For economic, environmental and ecological reasons it is not sensible to [repeal] this.

Mike Danforth: Also, support Bill Sutter's points. The rule conserves a trash product that would otherwise become a wasted resource.

C. Pendleton: We've promoted local management. We have to look at why this is wanted and it shouldn't be for a few persons. What message does this council send if the closures are repealed?

Blair Pyne: The Zone D Council has not taken this up. Make it the 16th of April and you eliminate the gear conflict.

Bill Sutter: This was requested by the North End Lobster [Coop] and for the Sheepscot River.

L. Knapp: Not aware that anyone wanted this and didn't even know it was closed.

B. Sutter: When scallop fishing the poor quality crabmeats are obvious.

B. Pyne: Much has changed in 25 years. Back then home picking was a big issue.

Motion continued: Unanimous. The Council voted to not approve i.e., oppose the repeal, of the rulemaking that would repeal of Chapter 25.50 Closed Season Regulation on Fishing for Crabs in Sheepscot River; Chapter 25.55 Closed Season on Fishing for Crabs in Damariscotta River; and Chapter 25.60 Closed Season on Fishing for Crabs in Medomak River. Not passed.

- Chapter 11.07(1)(a)(iii) Configuration of Drag (Handout)

Col. Fessenden reviewed. This rulemaking would provide the means for permission for non-conforming drags of 3.5 feet or less.

Motion: (C. Pendleton, B. Sutter) To accept as written.

Discussion: Bill Sutter supports the rulemaking and raised questions on a section of regulation [not proposed for change] in Chapter 11.07(1)(b) on mesh measurement. He described the drag he uses and indicated that when applying the mesh measurement rules that the new changes would not allow his drag to be in compliance.

Col. Fessenden stated that the changes would allow the use of his drag.

B. Sutter: However, the mesh measurement [text] makes it a non-conforming drag.

Comm. Lapointe: This is an example where enforcement may use their discretion.

B. Sutter: This is why the Scallop Advisory Council has been requested to review this.

Motion continued: Unanimous. The Council voted to approve the proposed rulemaking for Chapter 11.07(1)(a)(iii) Configuration of Drag.

- Chapter 31.10(C) Horseshoe Crabs - Daily and Possession limits (Handout)

Comm. Lapointe reviewed. The number of permits requested has ranged from 2-6 per year during 2000-2002 and 46 in 2003. The 2003 amount was primarily through the commercial license application that had been revised to include a check off box for this permit in 2003. This box has since been removed.

Bill Sutter asked for the locations of the survey sites. Comm. Lapointe indicated he would have to refer him to staff or a survey report.

Motion: (B. Pyne, C. Pendleton) To accept as written.

Discussion: None.

Motion continued: Unanimous. The Council voted to approve the proposed rulemaking for Chapter 31.10(C) Horseshoe Crabs - Daily and Possession limits.

- Chapter 37.02 Minimum Length Limit for Landlocked Salmon, Brown Trout, and Rainbow Trout (Handout)

Col. Fessenden reviewed. In order to protect Atlantic salmon in rivers that occasional mix with land locked salmon enforcement has to prove which is which fish for violations. Having a maximum limit removes opportunity for persons to take or possess small sea run Atlantic salmon by calling it a landlocked salmon since the land lock salmon don't exceed 25 inches in length. Bond Brook is a good example stream where this problem has occurred.

Motion: (B. Pyne, B. Sutter) To accept as written.

Discussion:

B. Pyne: Is this only tidal water? Col. Fessenden: Yes

D. Pecci: From the recreational fisheries standpoint this makes sense.

Motion continued: Unanimous. The Council voted to approve the proposed rulemaking for Chapter 37.02 Minimum Length Limit for Landlocked Salmon, Brown Trout, and Rainbow Trout.

- Chapter 55.03 Special Area Closures to Finfishing – Damariscotta Mills Fishway (Handout)

Col. Fessenden reviewed. This is an unusual set up where the rule doesn't close the mouth of the fishway. B. Sutter: Would this affect the commercial harvest of alewives? Col. Fessenden: No

Motion: (B. Pyne, B. Sutter) To accept as written.

Discussion:

B. Sutter: Is Sherman Lake considered a "dam" area?

Col. Fessenden: This would only apply on the tidewater side.

Motion continued: Unanimous. The Council voted to approve the proposed rulemaking for Chapter 55.03 Special Area Closures to Finfishing – Damariscotta Mills Fishway

- Chapter 110 Marine Harvesting Demonstration License (New) and Chapter 25.08(B)(1) & (6) Lobster Trap Tag System (Handout)

Deirdre Gilbert reviewed the Legislative history and development.

Motion: (B. Sutter, C. Pendleton) To accept as written.

Discussion:

Comm. Lapointe: A few years ago several special license requests came to the Advisory Council for demonstration harvesting or eco tours, which is not what the special license was intended for. A demonstration license was suggested for legislation. This was passed and these are the regulations.

B. Sutter: What is the cost for this license and are Sunday's prohibited?

D. Gilbert: \$25 and yes [see Chapter 110.03(D)(2)].

L. Knapp: Why not use the recreational lobster license with the 5-trap limit?

Comm. Lapointe: The number needed to be more than 5; there is no harvest allowed.

B. Sutter: Lobster license holders can still do this under their license anyway [without this license].

D. Turner: Why not allow weekends?

B. Pyne: When this Council was asked to consider Sunday's previously it was felt that allowing Sunday fishing would send a bad message [about the rules fishermen must follow] and the tourists should be aware of [these rules].

Col. Fessenden: The Lobster Advisory Council discussed this and were also against allowing Sunday fishing.

L. Knapp: How many licenses do you anticipate issuing?

Comm. Lapointe: Unsure, we're trying to look to the future.

L. Knapp: From the lobster standpoint we've been required to remove 50% of our gear; you can't limit recreational [fishers]; and should be suspicious of no limits on this license. Portland Harbor is crowded with traps. We shouldn't be putting more gear in the water.

Comm. Lapointe: If 50 persons get this license and each use 20 traps that is 1,000 traps versus 3 million now fished commercially. The demonstration/tourism activity is not a huge problem; however if it grows we will revisit this.

B. Sutter: We haven't denied special licenses other than those over 20 traps and the cost for the license should be more.

B. Pyne: Ditto – this license fee is too cheap and license holders should discuss with locals.

Comm. Lapointe: This is brand new and needs to be time tested.

L. Knapp: Trap limits failed to reduce the number of traps and until we see a reduction we shouldn't add any. The 2 in and 1 out [limited-entry system] hasn't worked.

Comm. Lapointe: [Remember] the limited entry laws have been changed by the Legislature.

B. Pyne: Retired/retiring licenses use fewer traps.

Comm. Lapointe: The counting issues need to be taken up by the Lobster Advisory Council.

D. Pecci: The cost of this license should be \$200-\$300/year. Agree with B. Pyne.

B. Sutter: L. Knapp makes good points although on the practicality side this type of license is going where there is tourism, which is not everywhere.

D. Temple: It is ridiculous to say we should keep the lobsters in the sea. Hiding doesn't solve the issue. Getting people interested in the industry is important [otherwise] they won't see what happens if you don't show it to them.

Comm. Lapointe: The effort control discussion needs to be taken up by the Lobster Advisory Council. Be wary of tying a license to how much you earn.

Motion continued: Approved, L. Knapp – opposed. The Council voted to approve the proposed rulemaking for Chapter 110 Marine Harvesting Demonstration License (New) and Chapter 25.08(B)(1) & (6) Lobster Trap Tag System.

- Chapter 9 / 48 and 15-20 Shellfish Sanitation continued
 - Chapter 9 Harvester: Shellstock Harvesting, Handling and Sanitation (New);
 - Chapter 15 General Shellfish Sanitation Requirements;
 - Chapter 16 Uniform Physical Plant Equipment and Operation Requirements;
 - Chapter 17 Shucker-Packer;
 - Chapter 18 Shellstock Shipper;
 - Chapter 19 Reshipper;
 - Chapter 20 Depuration; and repeal of
 - Chapter 48 Identification and Tagging of Shellfish

Chair David Turner reported that the subcommittee had resolved the issues for the motion passed at the meeting March 30th. See handout to the sub committee that meet prior to this meeting. Persons who participated in the sub committee included Mike Danforth, Ralph Smith (via phone), David Turner, and Dana Rice was unable to attend due to a herring meeting conflict. Staff included Commissioner Lapointe, Colonel Fessenden, Amy M. Fitzpatrick and L. Churchill.

Comm. Lapointe stated that the sub committee worked through a series of questions and the points raised at the last meeting that require legislative change will be revisited again through legislation.

Harvesters may wet store when included in a dealer's wet storage and bulk tagging plans. Off loading at ramps will continue to be worked on. Safety is an important consideration to make this work at ramps or beaches versus piers. Amy Fitzpatrick and Mike Danforth discussed tanks in a vessel regarding recycling water versus flow through and concluded that this issue is or can be resolved.

Mike Danforth asked if the concept of State approved landing at beaches would apply only to dealers.

A. Fitzpatrick: Harvesters would also be allowed to use these areas provided they are on a dealer's wet storage and bulk tag plans.

B. Sutter: There should be a 6-hour limit [to leave bagged shellfish on a ramp, for example]. Unless Maine is in compliance with the Model Ordinance, Maine harvesters are at risk. There are also a number of items that require Legislative changes to also not put Maine at risk. These should be approved contingent upon changes by the Legislature. If not passed by the Legislature then the onus is on the Legislature [for non-compliance].

Comm. Lapointe: The Council needs to pass or not pass. We do not have authority to make the suggested contingency. The necessary Legislative changes should be identified with what FDA allows.

B. Sutter: Legislative changes are mostly about soft shell clams.

A. Fitzpatrick: That is not correct.

B. Sutter: Canada?

A. Fitzpatrick: There are more issues than soft shell clams and the Canada wet storage date issue.

M. Danforth: Are mahogany quahogs going out of state?

A. Fitzpatrick: Yes, we have complaints on that, particularly when Boston is only an hour past Portland and persons just don't stop in Portland.

Chair D. Turner: At the conclusion of the sub committee meeting Ralph Smith was asked if it was ok to vote on these regulations at today's meeting and he said he was ok with a vote being taken.

B. Sutter: Were Lori Howell's points covered? Comm. Lapointe: Yes.

Motion: (B. Sutter, D. Pecci) *To accept as written with the approved changes and items agreed to be addressed by the sub committee.*

Discussion: None

Motion continued: *Unanimous. The Council voted to approve the proposed rulemakings for Chapters 9, and 15-20 and repeal of Chapter 48.*

4. Other Business

B. Sutter: When a letter has been prepared for the Legislature on the shellfish issues the letter should be signed by all Advisory Council members. Comm. Lapointe: ok.

L. Churchill: Reviewed pending rulemaking (3) - Chapter 25.08(B) Lobster Trap Tag System (non-commercial); 25.93(B) Lobster Fishing Effort Limitations; and Chapter 26.20 Sea Urchin Research Conservation Areas – Repeal sections 1-3 and 5-7. Hearings will be held Monday, April 26 at the lab in West Boothbay Harbor. The written comment closes May 6th.

Comm. Lapointe: As a follow up to the surf clam issues discussed at the meeting on March 30th he read a response regarding this issue from Thomas Hoff via Linda Mercer. "...several states have surfclam (one word now according to AFS) fisheries in their state waters. They are not at all affected by the Federal FMP as long as the effort remains in state waters. Should the boats cross over into the EEZ, they would need federal permits and cage tags, which are the denomination used in the federal management. ITQ tags can be acquired from anyone who holds shares either by annually renting them or outright permanent purchase."

Comm. Lapointe: The report from the US Commission on National Ocean Policy is now available and is about 500 pages long. If you have comments please send them in. Staff will put a link on our web site to view the entire report. The much shorter executive summary will be emailed to Council members and or hard copies mailed.

Comm. Lapointe: On groundfish - a draft of amendment 13, 25 pages long, was issued by NMFS.

B. Sutter: On a related issue, regarding persons on the socio economic side of Amendment 13, why reward those persons who have done the most damage [to the groundfish fishery]? That is, those who still have their license and didn't fish lose their license versus those who fished are rewarded by being allowed to keep their license?

Comm. Lapointe: There are many issues and discussions on latent effort. We plan to advance this issue. Persons haven't lost their license unless they've given them up.

B. Sutter: Open access is now gone if you didn't fish enough under Amendment 1. [Given] the apparent intent to use federal groundfish rules on the shrimp fishery this is not fair when Maine catches 90% of the shrimp fishery. If a control date is used based on the 2003-2004 season with a TAC based on the 2003-2004 landings then the small boats will be removed from the fishery.

Comm. Lapointe: This scenario would be too constrained. We don't have the authority to limit entry without going through the Legislature or the entire amendment process.

B. Sutter: Even though all Atlantic States control this?

Comm. Lapointe: The shrimp fishery is managed by 3 states.

L. Knapp: Will shrimp landings be used for a stock assessment this year? Comm. Lapointe: Yes.

L. Knapp: How can you use such a poor year for landings?

Comm. Lapointe: Stock assessments are not limited to landings data only. Assessments include effort and other things as well, not only landings.

L. Knapp: ...engineered numbers?

Comm. Lapointe: Unsure of this point however this can be found out. We should use caution.

C. Pendleton: The 2 days of fishing will be reflected in the stock assessment. Also, the scientists said the shrimp wouldn't be there.

B. Pyne: In August when we hear there shouldn't be a shrimp season it sends a flag saying no-thank-you.

Comm. Lapointe: The stock assessment is based on evidence that shows variation in that animal. The Advisors, through a public process, ask the technical people in advance during late summer for that info.

B. Pyne: The processors are weary.

Comm. Lapointe: It was late a few years ago and there is always tension between availability and resource.

B. Sutter: To handle the volume picking machines require leases for 6 months versus a 20-day season.

B. Pyne: Canada is fishing year round.

Comm. Lapointe: The whole world fishes shrimp year round and the market now has access all summer long.

C. Pendleton: [...re: Amendment 13...] There is a group meeting May 10-12th to build legislative support, for safety nets for individual transfer quota systems. Permit holders and crewmembers get to vote.

Along with Peter Shelley, Conservation Law Foundation, they have pushed the other plaintiffs in the lawsuit with questions on picking and choosing our battles versus challenging again.

Also, there was a meeting recently in Boston that included Allyson Jordan, Kristan Porter and representatives from Machias Savings Bank on how to leverage credit for days at sea. The permit may now be part of the collateral. The group in the room included up to 70' boats. We're opposed to leasing and buy back but the 52 day permits are going for \$100-\$200K while not knowing what Amendment 13 will be. It is interesting that the banks are participating in these discussions.

Comm. Lapointe: 5 million has been requested from Congress for groundfish relief for Maine. We were asked to come up with a State plan and these discussions are continuing.

C. Pendleton: We're at wits ends as to what to do. Given liquidity and some cash what to do next [is the question] as to what will be worthwhile in a days at sea program for the next few years that may not survive. We've proven we cannot segregate the fleets.

Comm. Lapointe: The Cape Cod yellowtail [TAC] can be reached in 2 fishing weeks. George's Bank cod are in terrible shape. Need surgical changes not broad ones and there is a high-risk that things won't work but originally Amendment 13 was supposed to be rebuilt but instead we got a repaint of a '73 Pinto...

B. Sutter: Those who count on nature based resources are in for a disappointment because those left standing are then faced with Pew or Oceaniana starting all over again.

Comm. Lapointe: There used to be lots of people in the Mid Atlantic quahog industry and it's now ~100.

B. Sutter: This equals privatization of the resource such as in New Zealand.

Comm. Lapointe: Marine Protected Areas - He discussion marine protected area meetings recently attended. Those who want MPA's have been asked to propose an area, not us. He described an MPA

in Florida and how it was developed. The MPA committee meets again in September and this council should discuss this again after that meeting.

Comm. Lapointe: Please look at the DMR Draft Long Range Plan handout from last meeting and give us your issues. We're looking for issue identification now.

C. Pendleton: [Amendment 13 continued] The money requested from Congress seems low by comparison to other industries.

Comm. Lapointe: The 5 million request from the feds is a placeholder, a starting point.

C. Pendleton: Could we develop criteria on how fishermen and organizations can enter into agreements with the Department to then go back for funding? NEC 75/25 works great for boats but if the researcher doesn't have the resources it doesn't work. If we could get private money to add to the Department we could go after some of these other funding sources. Then update the science module. Saco Bay is a good example, it looked bad but we learned a lot.

B. Pyne asked about the 2003 lobster landings.

Comm. Lapointe explained that at the time of the Fishermen's Forum when it is usually announced it was found that the NMFS had not yet entered up 4 months of data.

B. Pyne: Would it be possible to consolidate the landings/harvest reporting forms?

Comm. Lapointe: The Department is working towards this and with the Atlantic States Coastal Cooperative Statistics Program that has a web-based program. We will have staff give a report on this at the next meeting.

B. Sutter asked about the status of upcoming urchins rules.

Comm. Lapointe: Staff will also be asked to give a similar report on urchin issues at the May meeting.

The next scheduled meeting is Wednesday, May 19, 2004.

Motion: (B. Pyne, D. Pecci) Unanimous. The Council voted to adjourn.